



## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Adopt Resolution of Vacation of Surplus Portion of Loma Drive Lying Adjacent to Parcel Located at 1310 West Turner Road and Authorize City Manager to Execute Agreement to Exchange the Vacated Right-of-way for Public Improvements

**MEETING DATE:** September 2, 2009

**PREPARED BY:** Public Works Director

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**RECOMMENDED ACTION:** Adopt a resolution of vacation of a surplus portion of Loma Drive lying adjacent to parcel located at 1310 West Turner Road and authorize City Manager to execute an agreement to exchange the vacated right-of-way for public improvements.

**BACKGROUND INFORMATION:** The west 20 feet of the existing Loma Drive right-of-way between Turner Road and the railroad was dedicated to the City of Lodi as a voluntary gift by a grant deed from Lewis T. and Clara E. Mason recorded on July 28, 1944, in Volume 877, Page 496 in Book of Official Records of San Joaquin County. The 20-foot street right-of-way dedication increased the Loma Drive right-of-way width from 60 feet to 80 feet from Turner Road to the railroad. The Loma Drive right-of-way south of the railroad is 60 feet. It is not known why the additional right-of-way was gifted to the City, and there are no restrictions recorded on the property to be vacated. The 20-foot dedication is not improved with street curb, gutter or sidewalk, and there are no plans to expand Loma Drive. Existing street improvements on Loma Drive south of Turner Road were installed based on a 60-foot right-of-way.


The owner of the property located at 1310 West Turner Road obtained a building permit to remodel the existing residence on the parcel and requested the vacation of a portion of the westerly Loma Drive street right-of-way. Per Streets and Highways Code, Section 8334, excess right-of-way may be summarily vacated if not required for street purposes. The surplus right-of-way includes 3,223 square feet of the original 3,883 square foot right-of-way dedication and lies west of and outside the existing street improvements, as shown on Exhibits A and B. No utilities occupy this area. The remaining 660 square feet of the original dedication will be retained as street right-of-way, and a meandering sidewalk will be installed along Loma Drive by the property owner as a condition of approval of the building permit obtained for the remodel project.

Under Section 8333 of the Streets and Highways Code, a local agency may summarily vacate an easement if the easement has not been used for the purpose it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation.

Pacific Gas and Electric Company, Comcast, AT&T, and the City of Lodi Electric Utility Department, and the Streets and Water/Wastewater Divisions have approved the vacation of street right-of-way without any further comments or conditions. Staff recommends that the right-of-way vacation be approved.

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APPROVED:

  
Blair King, City Manager

The property within the proposed vacation is owned in fee by the City and will not automatically revert to the adjacent property owner at 1310 West Turner Road upon vacation. The owner wishes to acquire the vacated right-of-way to remedy an encroachment into the right-of-way by the existing garage and to provide the necessary setback to allow the construction of a masonry wall along the Loma Drive frontage for privacy. Since the existing wheelchair ramp at the Turner Road/Loma Drive intersection is not in compliance with current ADA standards, the property owner has offered to remove and replace the existing wheelchair ramp in exchange for the vacated right-of-way. The cost to the property owner for the improvements to the wheelchair ramp (estimated to be \$10,000) is approximately equal to the value of the property being vacated, particularly since the property would have little value on the open market. Staff feels that the owner's request is reasonable and is similar to past practice whereby street improvements have been exchanged for right-of-way dedications.

Staff recommends City Council authorize the City Manager to execute an agreement with the property owner for the exchange of the surplus right-of-way for the removal and replacement of the wheelchair ramp in conformance with City standards and to the approval of the Public Works Department.

**FISCAL IMPACT:** Not applicable.

**FUNDING AVAILABLE:** Not applicable.

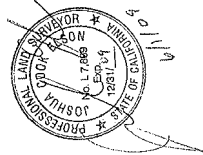
  
\_\_\_\_\_  
**F. Wally Spindelin**  
Public Works Director

Prepared by Chris Boyer, Junior Engineer

FWS/CRB/pmf

Attachments

cc: Denise Wiman, Senior Engineering Technician  
Chris Boyer, Junior Engineer

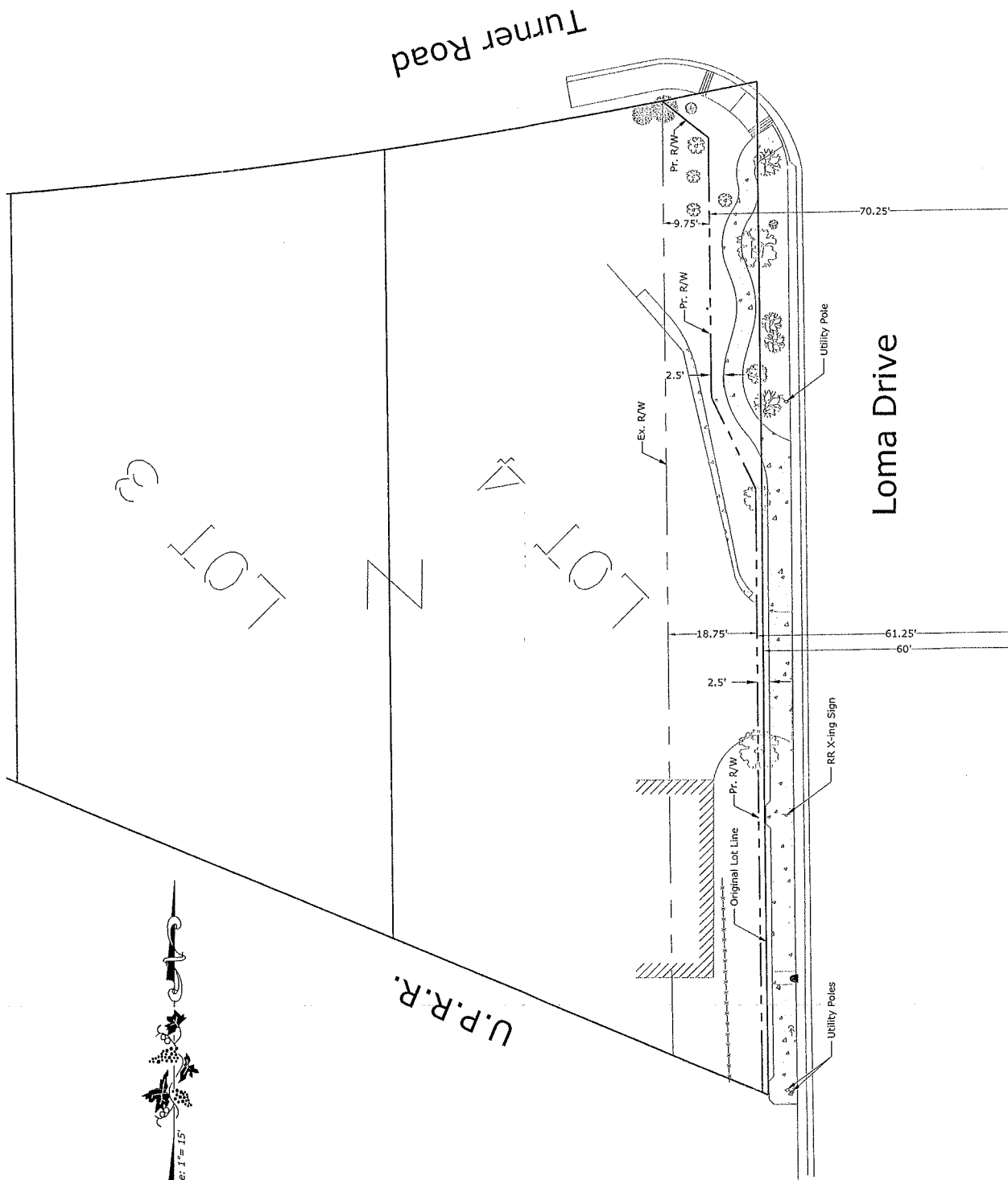


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BAUMBACH & PIAZZA, INC.  
CIVIL ENGINEERS • SURVEYORS  
323 W. Elm St.  
Fullerton, CA 92740  
www.baumengr.com  
714.944.8414

1310 W. Turner Road  
Proposed Right of Way  
Prepared for: Mike Stallone

SHEET OF 1  
JOB NO. 09021

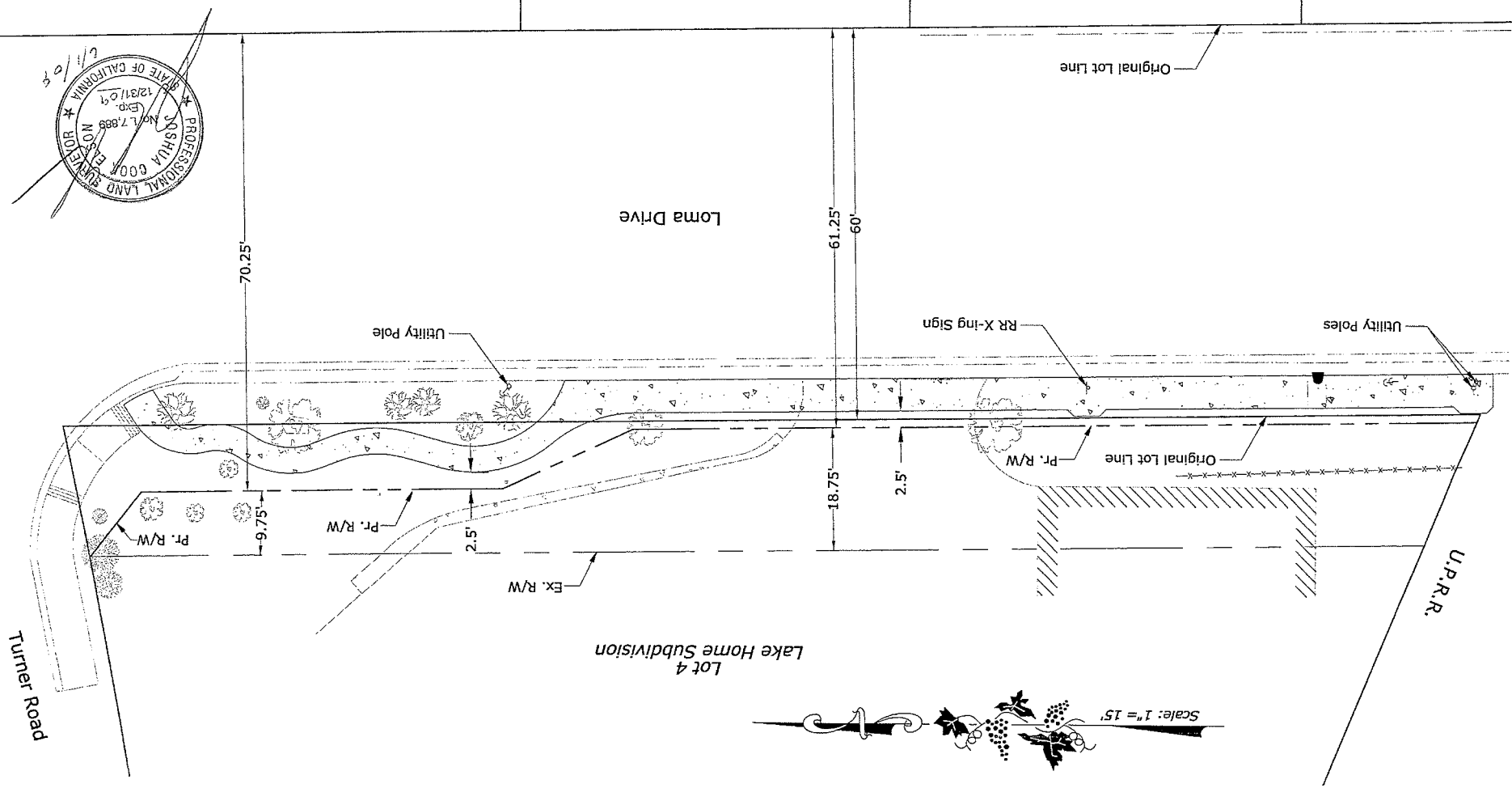


Scale: 1"= 15'

Exhibit A

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1310 W. Turner Road  
Proposed Right of Way  
prepared for: Mike Stallings



Scale: 1" = 15'

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CIVIL ENGINEERS • SURVEYORS  
www.bpengIneers.net  
209.368.6618  
PREPARED IN THE OFFICE OF:  
323 W. Elm St.  
Lodi, CA 95240



Exhibit B

WHEN RECORDED, RETURN TO:  
City Clerk  
City of Lodi  
221 West Pine Street  
Lodi, CA 95240

AGREEMENT FOR THE ACQUISITION OF VACATED RIGHT-OF-WAY

THIS AGREEMENT is made and entered into by and between the CITY OF LODI, hereinafter referred to as "City" and MICHAEL W. STALLINGS and PATRICIA STALLINGS, husband and wife as joint tenants, hereinafter referred to as "Owner".

RECITALS:

Owner is the owner of that certain real property situated in the City of Lodi, County of San Joaquin, known as 1310 West Turner Road (APN 039-030-03) depicted in Exhibit A attached hereto and incorporated herein by this reference and described as follows:

See Attachment 1

WHEREAS, the City has adopted Resolution of Vacation (Resolution No. 2009-\_\_\_\_ attached as Exhibit B) to vacate a surplus portion of Loma Drive lying adjacent to Owner's parcel at 1310 West Turner Road; and

WHEREAS, Owner has obtained a building permit (Permit No. B08-1537) to remodel the existing residence at 1310 West Turner Road; and

WHEREAS, Owner is required to install sidewalk along Loma Drive as a condition of approval of said building permit; and

WHEREAS, Owner wishes to acquire the vacated right-of-way to remedy an encroachment into the right-of-way by an existing garage and to provide the necessary setback to allow the construction of a masonry wall along the Loma Drive frontage for privacy; and

WHEREAS, the existing wheelchair ramp at the southwest corner of the Turner Road/Loma Drive intersection is not in compliance with current ADA standards;

NOW THEREFORE, it is mutually stipulated and agreed as follows:

1. Owner agrees to remove and replace, at Owner's expense, the existing wheelchair ramp at southwest corner of the Turner Road/Loma Drive intersection in conformance with City standards under the terms of an encroachment permit to be obtained from the Public Works Department.
2. City agrees to present Owner with a grant deed for the vacated surplus right-of-way in exchange for the above-specified improvements upon completion and acceptance by the City of said improvements.
3. Owner agrees to assume responsibility for the maintenance of the existing street trees along the Loma Drive frontage of Owner's parcel.

4. City agrees to allow the installation by the Owner or Owner's contractor of private landscape and irrigation improvements that encroach into the remaining Loma Drive right-of-way to facilitate the maintenance of the existing street trees under the terms of an encroachment permit to be obtained from the Public Works Department.
5. Owner agrees to save, defend, indemnify and hold harmless the City, its officers, agents and employees, from liability of any nature whatsoever arising from Owner's use or occupation of the Lorna Drive right-of-way or City action requiring the removal and relocation of the encroaching private landscape and irrigation improvements.
6. This agreement shall run with the land and be binding on the Owner, its heirs, successors or assigns.
7. Herein is set forth the entire agreement between the parties. The performance of these conditions constitutes full performance and shall relieve City of all further obligations or claims.
8. In the event either party hereto breaches the terms, conditions and covenants of this Agreement, then the prevailing party in any suit to enforce this Agreement or restrain the breach thereof, shall in addition to any other relief or damages awarded, be entitled to a reasonable attorney's fee and all costs of suit to be set and determined by any court of competent jurisdiction and added to any judgment obtained.
9. This agreement shall be recorded in the office of the San Joaquin County Recorder, P. O. Box 1968, Stockton, California, 95201-1968.

IN WITNESS WHEREOF, Owner and City have caused their names to be hereunto affixed and the City of Lodi has caused its corporate name and seal to be hereunto affixed by its proper officers thereunto duly authorized.

MICHAEL W. STALLINGS

\_\_\_\_\_  
Date

\_\_\_\_\_  
PATRICIA STALLINGS

\_\_\_\_\_  
(CORPORATE SEAL)

CITY OF LODI, A MUNICIPAL CORPORATION

By: \_\_\_\_\_  
Blair King, City Manager

\_\_\_\_\_  
Date

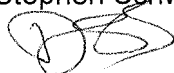
ATTEST:

\_\_\_\_\_  
Randi Johl, City Clerk

\_\_\_\_\_  
Date

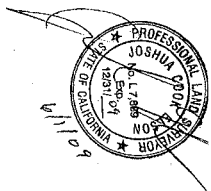
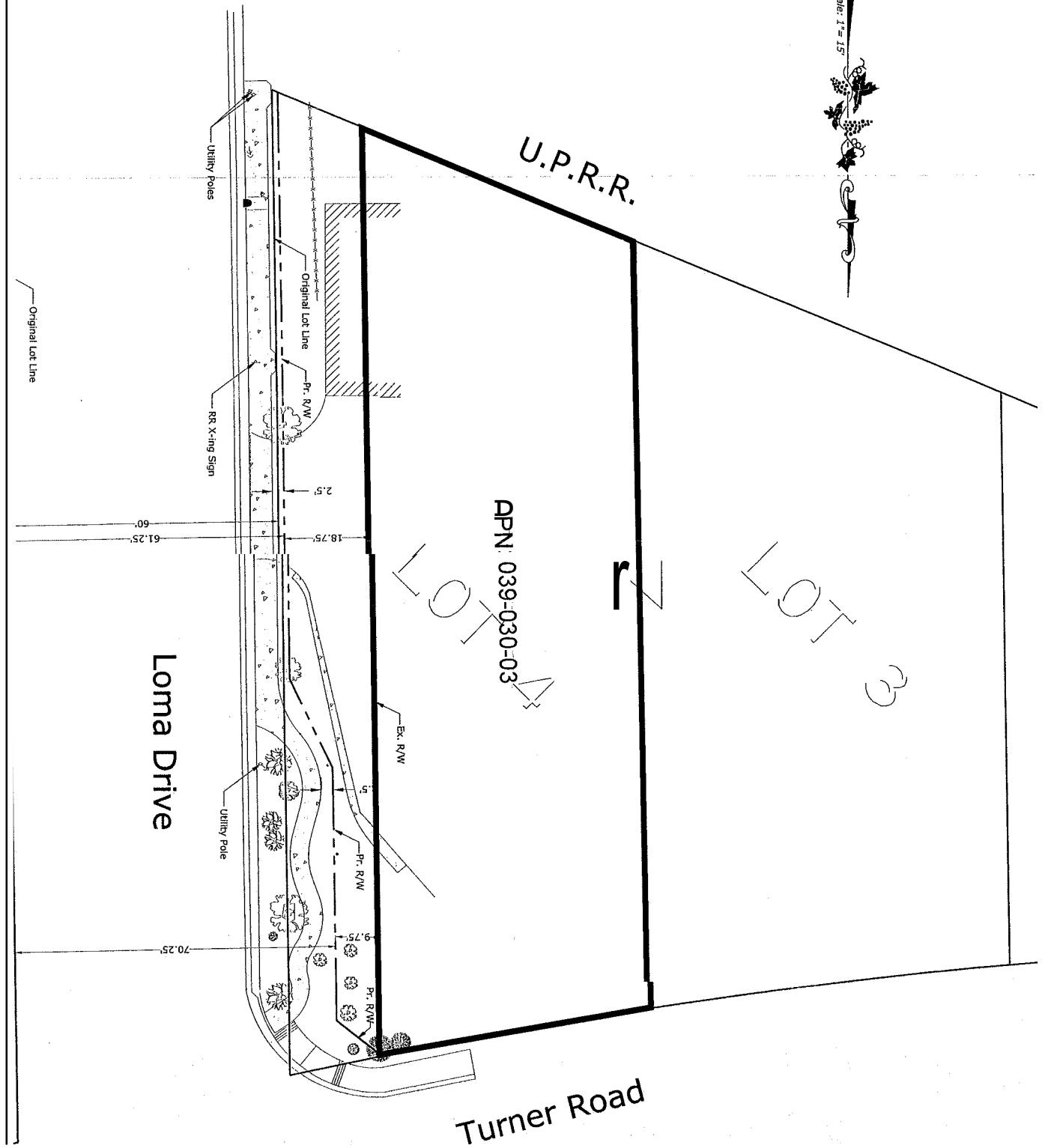
APPROVED AS TO FORM:

\_\_\_\_\_  
D. Stephen Schwabauer, City Attorney



# Exhibit A

Scale: 1"=15'



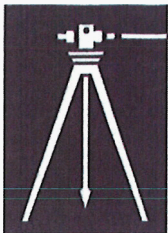
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DESIGN: ICE DRAWN BY: JR

PREPARED IN THE OFFICE OF  
**BAUMBACH & PIAXZA, INC.**

**1310 W. Turner Road**

SHEET 1 OF 1  
FOR 00000



**BAUMBACH & PIAZZA, INC.**

CIVIL ENGINEERS • LAND SURVEYORS

www.bpengineers.net

323 W. Elm Street  
Lodi, CA 95240-2003  
Phone (209) 368-6618  
Fax (209) 368-6610

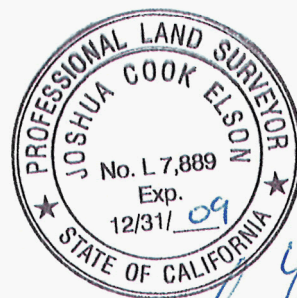
Legal Description  
Mike Stallings  
APN: 039-030-03

All that certain real property situated in the City of Lodi, County of San Joaquin, State of California, and being more particularly described as follows:

All of Lots 3 and 4, as shown on the Map entitled, "LAKE HOME SUBDIVISION" recorded in Volume 11 of Maps and Plats, Page 30, San Joaquin County Records.

EXCEPT THEREFROM a portion of said Lot 4 and being more particularly described as follows:

Beginning at the southeast corner of said Lot 4; thence North  $67^{\circ}18'00''$  West, 1.36 feet along the south line of said Lot 4; thence North  $00^{\circ}54'00''$  West, 129.80 feet parallel with the east line of said Lot 4; thence North  $25^{\circ}04'39''$  West, 21.97 feet; thence North  $00^{\circ}54'00''$  West, 55.75 feet parallel with said east line; thence North  $51^{\circ}17'29''$  West, 12.75 feet to the North line of said Lot 4; thence easterly along said North line along a curve to the left having a radius of 1240.00 feet, a central angle of  $0^{\circ}56'42''$ , and an arc length of 20.45 feet to the northeast corner of said Lot 4; thence South  $00^{\circ}54'00''$  East, 218.18 feet along the east line of said Lot 4 to the point of beginning.



*Joshua Cook Elson*  
8/7/09



RESOLUTION NO. 2009-120

A RESOLUTION OF THE LODI CITY COUNCIL  
VACATING A SURPLUS PORTION OF LOMA DRIVE  
LYING ADJACENT TO PARCEL LOCATED AT  
1310 WEST TURNER ROAD AND AUTHORIZING THE  
CITY MANAGER TO EXECUTE AN AGREEMENT WITH  
MICHAEL AND PATRICIA STALLING TO EXCHANGE  
THE VACATED RIGHT-OF-WAY FOR PUBLIC  
IMPROVEMENTS

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WHEREAS, Michael and Patricia Stallings, the owners of 1310 West Turner Road (the "Property"), have requested the vacation of a portion of a 20-foot street right-of-way dedicated to the City of Lodi on July 28, 1944, and more particularly described in Attachment 1 and delineated on the attached map marked Exhibit A; and

WHEREAS, the right-of-way has not been used by the City for the purpose for which it was dedicated or for any other use; and

WHEREAS, the Streets and Highways Code of the State of California §8333 provides that the legislative body of a local agency may summarily vacate a public service easement if the easement has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation and the easement has been superceded by relocation and there are no other public facilities located within the easement; and

WHEREAS, pursuant to the requirements of Government Code 327288.1, the names of the owners of the title or interest in the Property as they appear on the latest equalized assessment roll are:

Owners: Michael and Patricia Stallings

WHEREAS, in accordance with Streets and Highways Code 38300 et seq., it is the desire of the City Council of the City of Lodi to vacate such street right-of-way; and

WHEREAS, the property within the proposed vacation is owned in fee by the City of Lodi and will not automatically revert to the adjacent property owners at 1310 West Turner Road upon vacation; and

WHEREAS, the owners of 1310 West Turner Road wish to acquire the vacated right-of-way to remedy an encroachment into the right-of-way by the existing garage and to provide the necessary setback to allow the construction of a masonry wall along Loma Drive frontage; and

WHEREAS, the existing wheelchair ramp at the Turner Road/Loma Drive intersection if constructed today would not be in compliance with current Americans with Disabilities Act (ADA) standards, and the property owners of 1310 West Turner Road have offered to remove and replace the existing wheelchair ramp in exchange for the vacated right-of-way; and

WHEREAS, the cost to the City to install a wheelchair ramp in conformance with current ADA standards is approximately \$10,000; and

WHEREAS, staff feels the owners' request is reasonable and is similar to past practice whereby street improvements were provided by the City in exchange for right-of-way dedications.

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council as follows:

1. That the 20-foot street right-of-way located on the westerly side of Loma Drive between Turner Road and the railroad be vacated; and
2. That from and after the date this resolution is recorded, such property will no longer constitute a street right-of-way; and
3. That in exchange for the removal and replacement of the existing wheelchair ramp located at the intersection of Turner Road and Loma Drive with an ADA-compliant wheelchair ramp by the Property owners, the City of Lodi will transfer the vacated right-of-way to the Property owners, Michael and Patricia Stallings.

Dated: September 2, 2009

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I hereby certify that Resolution No. 2009-120 was passed and adopted by the City Council of the City of Lodi in a regular meeting held September 2, 2009, by the following vote:

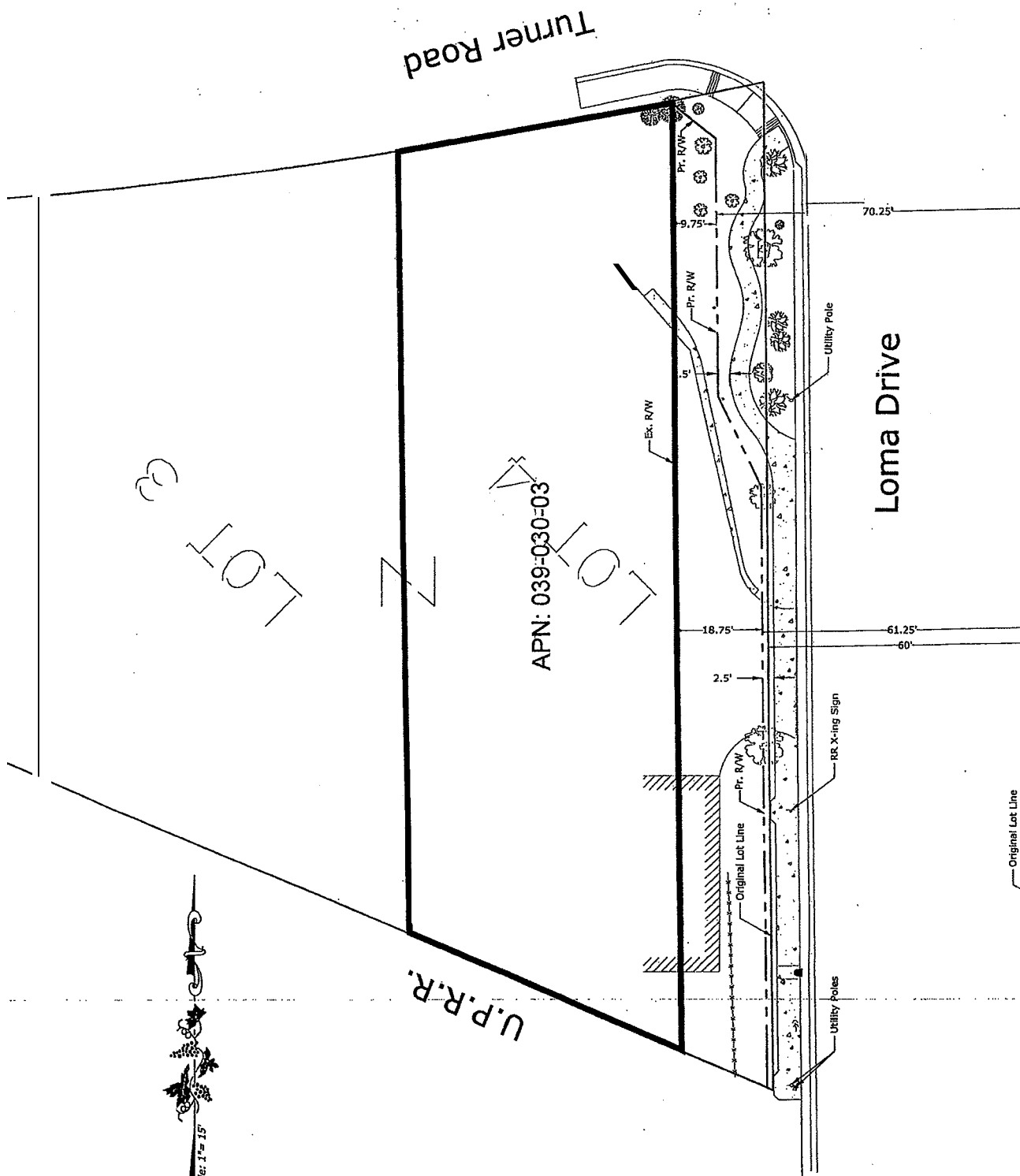
AYES: COUNCIL MEMBERS – Hitchcock, Katzakian, and Mayor Hansen

NOES: COUNCIL MEMBERS – None

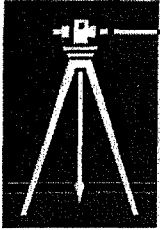
ABSENT: COUNCIL MEMBERS – Johnson and Mounce

ABSTAIN: COUNCIL MEMBERS – None

  
RANDI JOHL  
City Clerk



# Exhibit A



**BAUMBACH & PIAZZA, INC.**  
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www.bpengineers.net

323 W. Elm Street  
Lodi, CA 95240-2003  
Phone (209) 368-6618  
Fax (209) 368-6610

Legal Description  
**Mike Stallings**  
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